



AGENDA
BOARD OF ZONING APPEALS MEETING
RICHFIELD VILLAGE HALL
4128 HUBERTUS ROAD, HUBERTUS, WISCONSIN
AUGUST 20, 2013
7:00 P.M.

Pursuant to the requirements of Section 19.84, Wis. Stats., notice is hereby given of a meeting of the Village of Richfield Board of Zoning Appeals, at which a quorum of the Village Board may attend in order to gather information about a subject which they have decision making responsibility. The meeting will be held at the above noted date, time and location. Notice of Village Board Quorum, (Chairperson to announce the following if a quorum of the Village Board is in attendance at the meeting: "Please let the minutes reflect that a quorum of the Village Board is present and that the Village Board members may be making comments under the Public Comments section of the agenda, during any Public Hearing(s) or if the rules are suspended to allow them to do so.")

1. Call to Order/determination of quorum
2. Verification of Open Meetings Law compliance
3. Roll Call
4. Pledge of Allegiance
5. Approval of Minutes
 - a. December 8, 2011 - Regular Meeting
6. Recess and reconvene to gather additional information at 1358 Friess Lake Drive (Tax Key: V10-0437-00A)
7. Reconvene at Village Hall
8. PUBLIC HEARING
 - a. Discussion/Action regarding a variance application submitted by Carol Kingsbury-Reed for property located at 1358 Friess Lake Drive (Tax Key: V10-0437-00A)
9. ADJOURNMENT

Additional explanation of items on the agenda (Communication Forms) can be found on the village's website at www.richfieldwi.gov.

Notification of this meeting has been posted in accordance with the Open Meeting Laws of the State of Wisconsin. It is possible that members of and possibly a quorum of members of other governmental bodies of the municipality may be in attendance at the above stated meeting to gather information; no action will be taken by any governmental body at the above stated meeting other than the governmental body specifically referred to above in this notice.

Requests from persons with disabilities who need assistance to participate in this meeting or hearing should be made to the Village Clerk's office at 628-2260 with as much advance notice as possible.

5 a

1. Call to order/determination of quorum

Chairman Bob Bilda called the meeting to order at 6:00 p.m. In attendance were Board members Jack Lietzau, Don Weiland, Dan Pittenger, Brian Gallitz, 1st Alternate Justin Perrault, Assistant to the Village Administrator Jim Healy and Village Attorney John Macy.

Board member Richard Schlei, Excused Absence.

2. Verification of Open Meetings Law compliance

Assistant to the Village Administrator Healy stated that the agendas were posted at the Richfield, Hubertus, and Colgate U.S. Post Offices as well as Village Hall. Digital copies of the agenda were sent to the West Bend Daily News, Germantown Express News, Hartford Times Press, and the Milwaukee Journal Sentinel.

3. Roll Call

4. Pledge of Allegiance

5. Approval of Minutes

a. October 24, 2011 – Regular Meeting

Motion by Jack Lietzau to approve the minutes of the regular October 24, 2011, Board of Zoning Appeals meeting minutes as drafted; Seconded by Don Weiland; Motion passed without objection.

6. Recess and Reconvene to gather additional information at 4926 Lakeview Avenue (Tax Key: V10-0559) and 3285 Industrial Drive (Tax Key: V10-0256-00G)

At this time Jack Lietzau recused himself due to a conflict of interest. In his place, Justin Perrault as 1st Alternate will now be a voting member.

Motion by Brian Gallitz to Recess and Reconvene to gather additional information at 4926 Lakeview Avenue; Seconded by Don Weiland; Motion passed without objection.

Assistant to the Administrator Healy explained that the property at 3285 Industrial Drive will not be visited because they had withdrawn their application to the Board of Zoning Appeals just prior to the meeting. However, a Public Hearing would still take place.

7. Reconvene at Village Hall

Motion by Don Weiland to reconvene the meeting at 6:37PM; Seconded by Dan Pittenger; Motion passed without objection.

8. Discussion/Action regarding the variance application submitted by Roger and Phyllis Chase for the property located at 4926 Lakeview Avenue (Tax Key: V10-0559)

a. Public Hearing

Motion by Don Weiland to open the Public Hearing; Seconded by Brian Gallitz; Motion passed without objection.

At this time Chairman Bilda swore-in all members in the audience wishing to speak.

Nick Stortz, Stortz Custom Homes, was present to speak on behalf of the property owners. Mr. Stortz discussed his variance petition and his belief that it would be the Board's best interest to grant it. The homeowner were able to meet the 15' of fill requirement on three of the four home elevations, just not the street side which faces Lakeview Avenue. A letter from the DNR was presented which stated their non-objection to this proposed variance.

Mark Knueppel, 4930 Lakeview Avenue, spoke in favor of the variance petition and stated a majority of his neighbors felt the same way.

Steve Masters, 4906 Lakeview Avenue, felt that a serious hardship existed and commented that failure to grant the ordinance may have undesirable effects on parking and the ability of emergency services to access parcels.

Motion by Don Weiland to close the Public Hearing; Seconded by Dan Pittenger; Motion passed without objection.

At this time Staff reviewed their Communication Form with the Board of Zoning Appeals and went over the three criteria for receiving a variance: 1) Unnecessary Hardship, 2) Unique Property Limitations, and 3) Compelling Public Interest.

Being that the Board of Zoning Appeals is a quasi-judicial body, the determination whether the petitioner met this standard is their prerogative.

Several members of the Board of Zoning Appeals stated their belief that this was a self-imposed hardship due to the size of the proposed home.

Motion by Dan Pittenger to approve the variance petition by Roger and Phyllis Chase for their property located at 4926 Lakeview Avenue (Tax Key: V10-0559) to receive a variance from Section 70.213(G)(3)(a)(i) to receive relief from the 15' foot of fill standard on the southwestern property boundary line on Lakeview Avenue; Seconded by Justin Perrault; Motion fails 2-3 with Chairman Bilda, Gallitz, and Weiland opposed.

9. Discussion/Action regarding the variance application submitted by Dean Schulz on behalf of Strohwig Industries located at 3285 Industrial Drive (Tax Key: V10-0256-00G)

Assistant to the Administrator Healy explained that the petitioner has withdrawn his application but a Public Hearing must still take place to give everyone the opportunity who was notified.

a. Public Hearing

Motion by Don Weiland to open the Pubic Hearing; Seconded by Dan Pittenger; Motion passed without objection.

No one from the public spoke.

Motion by Brian Gallitz to close the Public Hearing; Seconded by Dan Pittenger; Motion passed without objection.

10. Adjournment

Motion by Don Weiland to adjourn; Seconded by Dan Pittenger; Motion passed without objection at 7:45PM.

Respectfully Submitted,



Jim Healy

Assistant to the Village Administrator
Planning and Zoning Administrator

DRAFT



VILLAGE OF RICHFIELD
BOARD OF ZONING APPEALS COMMUNICATION FORM
MEETING DATE: August 20, 2013

SUBJECT: Variance Petition for 1358 Friess Lake Drive (Tax Key: V10-0437-00A)

DATE SUBMITTED: July 31, 2013

SUBMITTED BY: Jim Healy, Assistant to the Administrator

POLICY QUESTION: DOES THE BOARD OF ZONING APPEALS BELIEVE THE APPLICANT MET THE BURDEN FOR PROVING AN UNNECESSARY HARDSHIP, UNIQUE PROPERTY LIMITATIONS, AND A COMPELLING PUBLIC INTEREST FOR THE REQUESTED VARIANCE TO 16' SETBACKS FROM THE 30' SETBACK REQUIREMENT?

ISSUE SUMMARY:

The issue before us tonight is whether or not the petitioner (or agent) has made a compelling case for the requested 'Area Variance'. Our applicant tonight is requesting a variance from Section 70.194(G)(2) which states that side yard setbacks must be a minimum of 30' on each side of the dwelling in the Rs-2, Single Family Zoning District section of the Code. Given the proposed home location and survey we've received, the petitioner is requesting a variance of 14' so that she may have the ability to construct a future home with 16' setbacks. It is important to note that this is what our Village Attorney calls a "speculative variance", because the Village is under the impression that this variance is being sought so that the lot will become more attractive to potential buyers and that the current land owner has no intention of building the proposed home. While the Village has granted these types of proposed variances in the past, it is the position of our Village Attorney that this is not a 'best practice' for the Board of Zoning Appeals. However, the granting of said 'speculative variance' would be permissible under Wisconsin State Statutes, at the discretion of the Board.

Area variances provide an incremental relief (normally small) from a physical dimensional restriction such a building height or setback (*State ex rel. Ziervogel v. Washington County Bd. Of Adjustments, 2004*). As you well-know, in order to legally grant a variance, the petitioner must prove three different criteria:

- 1) **Unnecessary Hardship:** For this type of variance, unnecessary hardship exists when compliance would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome (*State ex rel. Ziervogel v. Washington County Bd. Of Adjustment, 2004*). To determine whether this standard is met, our Board should consider the purpose of the zoning ordinance in question, its effects on the property, and the short-term, long-term, and cumulative effects of granting the variance (*State ex rel. Ziervogel v. Washington County Bd. Of Adjustments, 2004*).

While certainly I won't speculate as to the reasoning behind the 1983 adoption of this version of the zoning code, or the multiple nuances contained therein, from a planning and zoning perspective I can tell you that the purpose of the zoning ordinance in question relating to setbacks are the following:

- They provide uniformity to a neighborhood and determine the relationships and placement between structures.
- Setbacks allow a certain measure of privacy between neighbors, provide space for light and air circulation, and provide open space for landscaping, recreational use, and erosion control. They also provide distance between neighbors to mitigate noise and odors.
- Setbacks also ensure that there is adequate room for emergency vehicles between and around the properties and access for utility works that need to deal with power, water, and gas lines. It also provides space for maintenance on the home.

In the Village's Zoning Code there are multiple variations of the side yard setback. The intention was that each zoning classification would be so uniquely different that they would require a different setback margin. Presumably, these required distances vary based on the density of homes or buildings, size of properties or other environmental factors (shorelines). As a general principle, as lots become smaller, so do the setbacks. Also, the opposite is also sometimes true, as lots become larger, so do the setbacks. Furthermore, detached accessory structures (not being considered tonight, but as an anecdote) also have their own setback requirements.



VILLAGE OF RICHFIELD
BOARD OF ZONING APPEALS COMMUNICATION FORM
MEETING DATE: August 20, 2013

"Side Yard" is defined by 70.12(B):

Side Yard: A yard extending from the street yard to the rear yard of the lot, the width of which shall be the minimum horizontal distance between the side lot line and a line parallel thereto through the nearest point of the principal structure.

Setbacks are often used in the context of a minimum setback (analyzing tonight) which would be interpreted as a minimum distance between a structure and a property line.

The intent of the zoning district in question, Rs-2, Single Family Residential District is as follows:

"The Rs-2 Single Family Residential District is intended to provide for single-family residential development at densities not exceeding 0.67 dwelling units per net acre. Further, this zoning classification is restricted solely to properties located within Rs-2 Single Family Residential District prior to January 1, 1994."

Applicant's Response:

"The purpose of the Code is to prevent new development from interfering with existing residences and to preserve the 'character' of the surrounding community of Friess Lake. The character of the contiguous properties to the north and south of Ms. Reed's property consist of similarly dimensioned lots with homes constructed using 15 foot side yards. Although we acknowledge that the existing homes were likely constructed prior to the current 30' side yard setback requirement, allowing Ms. Reed to construct her home using a narrower side yard will conform to the existing character of the lake properties and protect the character of the established neighborhood.

In absence of an Area Variance, the effect on the property's use and value would be damaging to the neighborhood and the property value. Review of the Plat of Survey shows the proposed home placement with a 16 foot side yard. Comparing the current zoning requirement with the Plat of Survey yields the following results:

	Current Zoning	Variance Granted
Overall Lot Width	88'	88'
Side yard width (North)	30'	16'
Side yard width (South)	30'	16'
Width available for home	28'	56'

Under current zoning, Ms. Reed's home would be limited to the width of only 28 feet resulting in an unusually narrow and long home that would fail to maintain the similitude and character of the neighboring homes along East Friess Lake Road. Compliance would severely impact Ms. Reed's ability and likelihood of using the property for the permitted purpose of building a single family residence. Conformity with such restrictions would be unnecessarily burdensome to the aesthetics of the neighborhood and economic value of the property."

Staff's Response:

Relative to the Applicant's first paragraph, the fact that the neighbors have a reduced setback (unverified) should have no bearing on your decision. Nearby ordinance violations, even if similar to the requested variance, do not provide grounds for granting a variance (*Von Elm v. Bd. Of Appeals of Hempstead, 1940*).



VILLAGE OF RICHFIELD
BOARD OF ZONING APPEALS COMMUNICATION FORM
MEETING DATE: August 20, 2013

In the Applicant's second paragraph, the claim that the net effect on the property's use and value would be 'damaging' to the neighborhood and property values is yet another invalid argument. Economic loss or financial hardship does not justify a variance (*State v. Winnebago County 1995; State v. Ozaukee County Bd of Adjustments, 1989*).

The Applicants third paragraph appears to be a legitimate argument on its face. Creating a 28' wide home could potentially be considered 'unnecessarily burdensome'. However, it is the belief of Staff that the variance in question may be due to a self-imposed hardship. An applicant may not claim hardship because of conditions which are self-imposed (*State ex rel. Markdale Corp v. Bd of Appeals of Milwaukee, 1965; Snyder v. Waukesha County Zoning Board of Adjustments, 1976*). The self-imposed hardship in this situation could be that it may be possible for a home to be built on this property with the minimum required square footage without the need for a variance. However, to maximize the potential return on investment, this lot may have a greater pecuniary benefit to the land owner should a larger home be permitted to be built upon it.

Section 70.194(F)(2) states the following:

"The minimum floor area of a dwelling unit shall be 1,300 square feet; not less than 1,050 square feet on the main entry floor level of a two or more story building; and no bedroom shall be less than 100 square feet in area, exclusive of closets."

Based on this, the minimum square footage for a first floor home would be 1,050, with a basement having the same footprint totaling the home square footage to 2,100. If there was a second floor with the same footprint, that would increase the total potential size of this home to 3,150. The maximum allowable footprint on this home is 8% of the total lot area of approximately 72,309 or a home that is 5,785 sf. Please refer to the Staff Attachment to see what the buildable footprint for this property would look like with and without the variance.

2) Hardship Due to Unique Property Limitations

Unnecessary hardship must be due to unique physical limitations of the property, such as steep slopes or wetlands that prevent compliance with the ordinance (*State ex rel. Spinner v. Kenosha County Bd. Of Adjustments, 1998*).

Applicant's Response:

"The Zoning Map and the GIS Map presents the unique physical property limitations. The first 484 feet of the property is unbuildable since it is wetland and steeply sloped with a 35' drop-off. However, the most significant limitation is the narrowness of the property. With a width of only 88', compliance with the 30' side yard requirement would allow for a maximum home width of only 28'; a 50% reduction as compared to a 16' side yard as shown in the Plat of Survey. The overall impact would severely limit my client's ability to construct a reasonably sized home that maintains the character of the surrounding community and similitude of the neighboring homes."

Staff's Response:

Pursuant to Section 70.194(E)(2), the Applicant is correct that this property is legal, non-conforming with regard to the width. Presumably a majority of our parcels conform to this standard; otherwise, it should more than likely be changed. But having a width which is less than the standard for a zoning district would not necessarily impose a hardship on development. The Applicant's argument for having unique property limitations due to the steep grade on the western part of this parcel is in Staff's opinion not particularly convincing because the home is shown as being proposed on the flatter surface of the parcel which is away from the "35' drop off". Additional information will need to be gathered during the site visit and Public Hearing to determine if this standard is met.



VILLAGE OF RICHFIELD
BOARD OF ZONING APPEALS COMMUNICATION FORM
MEETING DATE: August 20, 2013

3) No Harm to Public Interests

A variance may not be granted which results in harm to public interests (*State v. Winnebago County, 1995; State v. Kenosh County Bd. Of Adjustments, 1998*). In applying this test, the Zoning Board should review the purpose statement of the ordinance and related statutes in order to identify public interests. In light of public interests, zoning boards must consider the short-term and long-term impacts of the proposal and the cumulative impacts of similar projects on the interest of neighbors, the community, and even the state. Review should focus on the general public interest, rather than the narrow interests or impacts on neighbors, patrons or residents in close proximity of the project.

Applicant's Response:

"We believe that if the variance is granted, there will be no harm to public interests. In fact, granting a side yard variance would promote the interests of the neighborhood, community, and Washington County in the following ways:

- **Neighbors and Community:** Allowing the ability to construct an appropriately sized home that would maintain the natural scenic beauty and character of the community.
- Fortification and strengthen of surrounding property values by maintaining home similitude on the eastern shore of Friess Lake.
- **County Real Estate Tax Revenue:** Granting our variance request will have a positive impact on the property's value. An increased property value will result in greater long-term real estate tax collections for Washington County."

Staff's Response:

In looking at the totality of what this decision may have on the Village, oftentimes the first place to look as a Staff is the actual intent of the Rs-2 Single Family Residential zoning district (previously stated).

From looking at the petition from a globalized perspective, one could make an argument that reducing the side yard setbacks for this property or other similar properties may have a negative cumulative effect. Staff is of the mindset that the public interest is served best and the spirit of the ordinance is followed when citizens are allowed a reasonable use of their property as prescribed by the Village Code. This setback of 30' provides a necessary privacy buffer to neighbors around the lake communities that were at one time deemed desirable by the Town Board. Keeping the setbacks at 30' will also ensure that there will be minimum loss of mature trees and vegetation and have a minimal negative effect on shoreline erosion or water quality, existing animal habitats, or community esthetics.

While it is without question that this property is a desirable piece of real estate due to its unobstructed view of Friess Lake and Holy Hill, a reasonably sized home could be constructed within the allowable zoning footprint. Please see the attachment for further details. The agent's arguments regarding future tax revenue and property values are invalid for reasons previously stated. More information will need to be gathered during the Public Hearing to see whether or not this standard has been met.

FUTURE IMPACT & ANALYSIS:

REVIEWED BY:

Village Deputy Clerk

Forward to Village Board: No
Additional Approvals Needed: No
Signatures Required: YES



VILLAGE OF RICHFIELD
BOARD OF ZONING APPEALS COMMUNICATION FORM
MEETING DATE: August 20, 2013

ATTACHMENTS:

1. E-mail from West Bend Daily News confirming publication of the scheduled Public Hearing
2. List of properties who were notified of the scheduled Public Hearing
3. Application materials submitted by Attorney Matthew DeMark, Agent for the Applicant
4. Rs-2, Single Family Residential District, Section 70.194(G)(2) relating to side yard setbacks
5. Potential building footprint overlays and site plans


STAFF RECOMMENDATION:

MOTION TO DIRECT STAFF TO DRAFT A FORMAL DECISION LETTER REGARDING THE VARIANCE PETITION, PROCEEDINGS, AND GENERAL OUTCOME WITH THE INTENTION THAT THIS LETTER WILL BE SIGNED BY THE VOTING MEMBERS OF THE BOARD OF ZONING APPEALS AND A COPY OF SAID DOCUMENT WILL BE PROVIDED TO THE PETITIONER.

APPROVED FOR SUBMITTAL BY:



Village Staff Member



Village Administrator

**VILLAGE CLERKS USE ONLY
BOARD ACTION TAKEN**

Resolution No. _____

Continued To: _____

Ordinance No. _____

Referred To: _____

Approved _____

Denied _____

Other _____

File No. _____

Planner

From: Freeman Legals <freemanlegals@conleynet.com>
Sent: Wednesday, July 31, 2013 7:27 AM
To: Planner
Subject: Re: Class II Public Notice for 8/20 Meeting

Importance: High

Jim,

This will run on 8/6 and 8/13 in the Daily News.

Thanks,

Teri Dahnke

*Waukesha Freeman, Oconomowoc Enterprise,
News Graphic and Daily News
Legal Department
Tel: 262-513-2697
Fax: 262-542-2015*

From: Planner <Planner@richfieldwi.gov>
Date: Wed, 31 Jul 2013 07:09:38 -0500
To: "freemanlegals@conleynet.com" <freemanlegals@conleynet.com>
Cc: Deputy Clerk <deputyclerk@richfieldwi.gov>
Conversation: Class II Public Notice for 8/20 Meeting
Subject: Class II Public Notice for 8/20 Meeting

Dear Teri,

Can you please confirm that you can run this Class II Public Notice on 8/6 and 8/13? Thank you!

Sincerely,

Jim Healy
*Assistant to the Village Administrator
Planning and Zoning Administrator
(262)-628-2260
Village of Richfield
4128 Hubertus Road
Hubertus, WI 53033*

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Follow us on Twitter, @RichfieldWis <<https://twitter.com/RichfieldWis>>

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V10-0451
Robert&Julie Fancher Revocable Trust
1362 E Friess Lake Rd
Hubertus, WI 53033

V10-045100A
Henry David Dux
1368 E Friess Lake Dr
Hubertus, WI 53033

V10-047200F
Robert Fancher
1362 E Friess Lake Rd
Hubertus, WI 53033

V10-047200E
Ronald C. Engelke
1415 State Hwy 164
Hubertus, WI 53033

dup'

V10-0473
Edward C. Walchak
1225 Richmond Ln
Wilmette, IL 60091

V10-047300A
Carol A. Kingsbury-Reed Living Trust
1150 Wejegi Dr
Hubertus, WI 53033

V10-047400C
Mark R. Webster
1356 E Friess Lake Rd
Hubertus, WI 53033

V10-047400B
Brian L & Janeen Zimmermann Trust
W5830 Puckaway Rd
Markesan, WI 53946

V10-047400A
David F. Olson
1350 E Friess Lake Rd
Hubertus, WI 53033

V10-047100F & V10-0471
Ronald C. Engelke
1415 State Hwy 164
Hubertus, WI 53033



N19 W24200 Riverwood Drive, Suite 150
Waukesha, WI 53188-1193
[p] 262-446-8145
[f] 262-446-8135
matt@riverwoodlas.com
www.riverwoodlas.com

Village of Richfield
Planning & Zoning Department
Attn: Jim Healy
4128 Hubertus Road
Richfield, WI 53033

July 29, 2013

Re: Carol Kingsbury-Reed
Request for Zoning Variance
PIN: V10_047300A

Dear Mr. Healy:

Thank you very much for your time and answering our questions during the initial Variance Application process. Enclosed you will find the following:

1. Variance Application; and
2. Letter providing detailed responses to the issues of Unnecessary Hardship, Unique Property Limitations, and No Harm to the Public Interest. I kindly request that you attach this letter to our application for the Planning and Zoning member's review.

It is my understanding that Ms. Reed has paid the \$455 application fee. As such, we request that you set a hearing date, arrange for publication of notice, and notify property owners within 300 feet of the property.

Very Truly Yours,

A handwritten signature in blue ink, appearing to read "Matthew R. DeMark", is written over a horizontal line.

Matthew R. DeMark, Attorney

Village of Richfield
Planning & Zoning Department
4128 Hubertus Road
Richfield, WI 53033

July 29, 2013

Re: Carol Kingsbury-Reed
Request for Zoning Variance
PIN: V10_047300A

Dear Planning & Zoning Members:

By way of introduction, my name is attorney Matthew DeMark, and I represent Carol Kingsbury-Reed (a/k/a Carol Reed) regarding her request for a zoning variance pertaining to her vacant lot on Friess Lake, property identification number V10_047300A, more commonly known as 1358 E. Friess Lake Road (hereinafter "Property").

For your reference, I have included a Zoning Map (attached hereto as Exhibit A), Plat of Survey (attached hereto as Exhibit B), and a GIS Map (attached hereto as Exhibit C) for your review so that you may familiarize yourselves with the location and characteristics of the Property.

We respectfully request that the Village of Richfield Planning & Zoning Department grant Ms. Reed a zoning variance allowing her to construct a home on her Property that maintains the similitude of homes in the surrounding neighborhood. We believe that Ms. Reed is eligible for an area variance and can satisfy the criteria defined in Wisconsin State Statutes §59.694(7)(c) by demonstrating that the current zoning restrictions for her Property 1) cause an unnecessary hardship; 2) that the hardship is due to the unique Property limitations; and 3) that the requested variance will not harm the public interests.

1. Unnecessary Hardship.

The Zoning Map and the Plat of Survey indicate that the first 847 feet of the Property, beginning at Friess Lake Road, is Zoned RS-2 (Single Family Residential District). The remaining 484 feet of the Property, continuing to the shoreline, is Zoned F-1 (Flood Land District). Based on a comparison of the Plat of Survey and the Zoning Map, it appears that the proposed home footprint is located in the RS-2 District. Consequently, the dimensional restrictions set forth in the Village of Richfield's Code Section 70.194(G)(2) (hereinafter the "Code") are relevant to our variance request.

The Village of Richfield's Code states that for RS-2 Districts, "There shall be a side yard on each side of all structures not less than 30 feet in width". However, my client's Plat of Survey shows a proposed home footprint using 16 foot side yard

widths. As such, we are requesting an **Area Variance** from the 30 foot side yard requirement.

The purpose of the Code is to prevent new development from interfering with existing residences and to preserve the “character” of the surrounding community of Friess Lake. The character of the contiguous properties to the north and south of Ms. Reed’s Property consist of similarly dimensioned lots with homes constructed using 15 foot side yards. Although we acknowledge that the existing homes were likely constructed prior to the current 30 foot side yard requirement, allowing Ms. Reed to construct her home using a narrower side yard will conform to the existing character of the lake properties and protect the character of the established neighborhood.

In absence of an Area Variance, the effect on the Property’s use and value would be damaging to the neighborhood and the Property value. Review of the Plat of Survey shows the proposed home placement with a 16 foot side yard. Comparing the current zoning requirement with the Plat of Survey yields the following results:

	Current Zoning	Variance Granted
Overall Lot Width	88’	88’
Side Yard Width (North)	30’	16’
Side Yard Width (South)	30’	16’
Width available for home	28’	56’

Under current zoning, Ms. Reed’s home would be limited to a width of only 28 feet resulting in an unusually narrow and long home that would fail to maintain the similitude and character of the neighboring homes along East Friess Lake Road. Compliance would severely impact Ms. Reed’s ability and likelihood of using the property for the permitted purpose of building a single family residence. Conformity with such restrictions would be unnecessarily burdensome to the aesthetics of the neighborhood and economic value of the Property.

2. Unique Physical Property Limitations:

The Zoning Map and the GIS Map presents the unique physical property limitations. The first 484 feet of the property is un-buildable since it is wetland and steeply sloped with a 35 foot drop-off. However, the most significant limitation is the narrowness of the Property. With a width of only 88 feet, compliance with the 30 feet side yard requirement would allow for a maximum home width of only 28 feet; a 50% reduction as compared to a 16 foot side yard as shown in the Plat of Survey. The overall impact would severely limit my client’s ability to construct a reasonably sized home that maintains the character of the surrounding community and the similitude of the neighboring homes.

3. No Harm to Public Interests:

We believe that if the variance is granted, there will be no harm to public interests. In fact granting the side yard variance would promote the interests of the neighborhood, community and Washington County in the following ways:

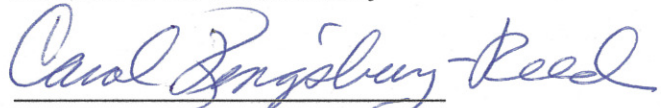
- **Neighbors and Community:**

- Allowing the ability to construct an appropriately sized home that would maintaining the natural scenic beauty and character of the community.
- Fortification and strengthening of surrounding property values by maintaining home similitude on the eastern shore of Friess Lake.
- **County Real Estate Tax Revenue:**
 - Granting our variance request will have a positive impact on the Property's value. An increased property value will result in greater long-term real estate tax collections for Washington County.

For the reasons stated above, my client and I humbly request that you consider the facts and exhibits presented in this request and grant a side yard variance changing the current requirement from 30 feet to 16 feet.

Very Truly Yours,


Matthew R. DeMark, Attorney


Carol Kingsbury-Reed, Property Owner



**Village of Richfield
Planning and Zoning**

4128 Hubertus Road
Hubertus, WI 53033
(p)262.628.2260 ♦ (f)262.628.2984

VARIANCE APPLICATION CHECKLIST

- ☐ **Pre-application meeting with Village Staff**
 - Date of meeting: _____
- ☐ **Application Received**
 - Date received: _____
- ☐ **Determination of completeness**
 - Date reviewed for completeness: _____
- ☐ **Processing of application fee into BDS**
- ☐ **Public Hearing notice sent to West Bend Daily News**
 - Confirmation of publication e-mail received on: _____
- ☐ **Public Hearing notice published in newspaper, first insertion**
 - Date of first insertion: _____
 - Confirmed by Deputy Clerk: _____
- ☐ **Public Hearing notice published in newspaper, second insertion**
 - Date of second insertion (7 days b/w last publication and public hearing): _____
 - Confirmed by Deputy Clerk: _____
- ☐ **Notice sent to property owners within 300' of property**
 - Date sent to property owners: _____
- ☐ **Site visit and meeting agenda prepared**
- ☐ **Site visit and meeting agenda posted at designated locations**
 - Hubertus Post Office _____
 - Colgate Post Office _____
 - Richfield Post Office _____
- ☐ **Agenda sent to applicant(s)**
 - Via e-mail _____
 - Via regular mail _____
- ☐ **Staff report sent to Board of Zoning Appeals members**
 - Date is Friday before Board of Zoning Appeals meeting: _____
- ☐ **Staff report sent to applicant**
 - Date is Friday before Board of Zoning Appeals meeting: _____
- ☐ **Meeting agenda posted online: _____**
- ☐ **Board of Zoning Appeals meeting/public hearing**
- ☐ **Written decision sent to applicant and/or minutes of meeting**
 - Date of decision letter being sent: _____
- ☐ **Application information stored in Lazerfish: _____**

VARIANCE APPLICATION

Complete this application and submit nine (9) copies to the Village Planning and Zoning Administrator along with the application fee. Before you formally submit your application, you may submit one copy to the Planning and Zoning Administrator who will ensure it is complete and provides enough information to describe the circumstances related to this application.

Overview

The most common appeals heard by the Board of Appeals are from property owners seeking a “variance” from one or more of the dimensional requirements established in the Zoning Ordinance, e.g. building setbacks. A “variance” is permission granted by the Board of Appeals to build or develop in a way that is different than required or allowed under the Ordinance.

It is important to understand that in accordance with Wisconsin Statutes the Village’s appeal procedures are enforced so that variances are granted only in response to unique limitations that affect and/or prohibit the use and development of a given property that are deemed by the Board of appeals to constitute an unusual or unnecessary, but not self-imposed “hardship” or circumstance, provided however that the requirements being varied to not result in harm to adjoining property, the neighborhood, and the general public interest.

Variances will not be granted for reasons that are common to other properties or for such simple reasons as the desires of the property owner. Variances are not granted routinely. Furthermore the existence of non-conforming buildings and properties or the granting of variances to other properties does not justify nor guarantee that the Board of Appeals will approve the variance. The decision is based on the evidence and testimony received as part of the application, during their site review of the property and through the public hearing process.

Additional Requirements

In addition to the criteria listed on this application, to qualify for a variance under FEMA regulations for property under the regulations of the Floodplain development standards contained in Sec. 70.213, the following criteria must be met:

- The variance may not cause any increase in the regional flood elevation
- Variance can only be granted for lots that are less than one-half acre and are contiguous to existing structures constructed below the RFE (Regional Flood Elevation)
- Variances shall only be granted upon a showing of good and sufficient cause, shall be the minimum relief necessary, shall not cause increased risk to public safety or nuisances, shall not increase costs for rescue and relief efforts and shall not be contrary to the purpose of Village Code Sec. 70.213

Use Variance

No variance(s) that would allow the use of a property and/or structure in any zoning district that is not a stated principal use or accessory use in that particular district, or, that would result in the intensification or increase in density of building area or lots of such principal or accessory uses shall be granted by the Board unless it finds based on the evidence and testimony submitted as part of the public records that all the following facts and conditions exist:

- Unnecessary Hardship
- Unique Property Limitations
- Public Interest

Area Variance

No variance(s) that would remove or make less strict or severe any setback, frontage, height, building or yard location, or other area restrictions and/or requirements that apply to a property and/or structure in any zoning district shall be granted by the Board unless it finds based on the evidence and testimony submitted as part of the public record that all of the following facts and conditions exist:

- Unnecessary Hardship
- Unique Property Limitations
- Public Interest

The Board of Appeals may impose special conditions on any use or development being proposed in order to ensure that these criteria can and will continue to be met. Only the minimal amount of relief necessary to allow reasonable use or development of the property will be granted. Unless otherwise stipulated by a condition of approval, variances that permit some type of building or development will expire after twelve (12) months unless the building or development commences within 12 months and continues in reasonable manner toward completion.

Property Owner Information

Name: **CAROL A. REED**

TRUST Name: **THE CAROL A. KINGSBURY-REED LIVING TRUST DATED AUGUST 30, 2012**

Mailing Address: **1150 WEJEGI DRIVE**

City: **HUBERTUS** State: **WI** Zip: **53033**

Phone Number: **262-496-0846**

Fax:

Email:

Property Information

Tax Parcel Number: **V10-0473-00A** Size of Parcel (acres): **1 ACRE (APPROX)** Zoning: **RS-2**

Physical Address: **1358 FRIESS LAKE DRIVE**

City: **HUBERTUS** State: **WI** Zip: **53033**

Request

What is the nature of your request for this variance? Example: to reduce the side yard setback from the required 30 feet to 25 feet in order to build an addition.

To Reduce the side yard setback from the required 30 feet to 16 feet in order to build a home on the vacant lot. (see attached for detailed discussion)

Section or Sections of Code

List the section or sections of the code that are related to your variance request.

Village of Richfield's Code Section 70.194(G)(2)

Supplemental Information – PLEASE SEE ATTACHED EXHIBITS

As a part of this application, include a plat of survey as prepared by a registered land surveyor, which depicts the following information as it applies to the variance being requested:

- ☐ Engineering scale and north arrow
- ☐ Name of project and location/vicinity map
- ☐ Owner's and/or developer's name and mailing address
- ☐ Architect and/or engineer's name and mailing address
- ☐ Date of plan submittal
- ☐ Location of all property lines, existing and proposed buildings and structures including fences, berms and walls, setback lines and yard requirements, easements, access restrictions, designated and mapped wetlands and 100-year floodplains, signs, exterior lights
- ☐ Location and number of access driveways and intersections to public roads, paved areas, parking, loading and storage areas
- ☐ Locations and size of existing and proposed septic tanks and disposal fields, holding tanks, storm water facilities, erosion control features, and landscaping areas
- ☐ Location of proposed solid waste (refuse) storage area
- ☐ Location of pedestrian sidewalks and walkways
- ☐ Existing and proposed public right-of-way widths
- ☐ Existing and proposed street names
- ☐ Any other site or use information which will assist the Planning and Zoning Administrator in reviewing the application and making a determination of zoning compliance
- ☐ A table, chart or schedule of building floor area and total impervious surface coverage in acres, square feet, and ratio, landscaped surface/open space coverage in acres, square feet and ratio, land area in areas and square feet, minimum parking space requirements and spaces provided
- ☐ Color rendering or model (optional) of property to be developed, including all buildings, parking areas, drainage basins and facilities, landscaping, and exterior lighting (See Planning and Zoning Administrator for examples)
- ☐ Existing zoning and land uses on adjoining property
- ☐ Any other site or use information which will assist the Planning and Zoning Administrator in reviewing the application and making a determination of zoning compliance

Unnecessary Hardship

Describe why you believe strict compliance with the zoning regulation(s) from which the variance(s) is/are being sought would create a subject practical difficulty or be unreasonably burdensome to the property owner in terms of severely limiting or prohibiting the reasonable use of the property as intended under the zoning ordinance and when compared to surrounding properties.

Please see attached for a detailed discussion addressing this issue.

Unique Property Limitations

Describe why you believe the unnecessary hardship is due to unique or special conditions or limitations affecting the subject property and/or structure that are not typical or generally shared by other surrounding properties.

Please see attached for a detailed discussion addressing this issue.

Public Interest

Describe why the variance if granted would not be contrary to the public interest by creating or having the potential for creating an adverse impact on the public, health, safety, or welfare of adjoining and surrounding residents, properties or the community.

Please see attached for a detailed discussion addressing this issue.

Property Owner Affidavit

I certify that I am the Owner(s) of the property which is the subject of this application in the Village of Richfield, Washington County, Wisconsin, and that all the information attached to or provided in support of said application, including sketches, data, and any other documents and material, are honest and true to the best of my (our) knowledge.

I understand and acknowledge the responsibility for any and all fees charged or costs incurred by the Village of Richfield to carry out the processing and review of this application; I (we) further acknowledge and understand that I (we) will be required to start an escrow account to which all processing and review cost will be charged; I (we) further acknowledge that in the event that the initial fee is not sufficient to cover all the costs associated with processing and reviewing the application I (we) will be required to provide the Village of Richfield an additional deposit; I (we) further acknowledge that the balance of any remaining fees shall be refunded within a reasonable amount of time after this application has been processed or withdrawn.

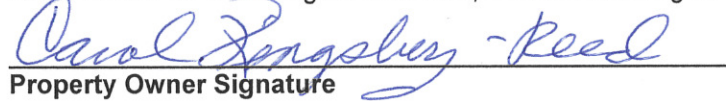
I understand that a change to one of the future land use maps does not change the zoning designation of the property. However, a rezoning of the property must be consistent with the 10-year future land use map.

I certify that the members of the Board of Appeals, along with Village Staff and other officials, and members of the public may enter my property to view the same.

I understand that if the Board of Appeals grants the variance I must obtain all other approvals required under Chapter 70 of the Village Code.

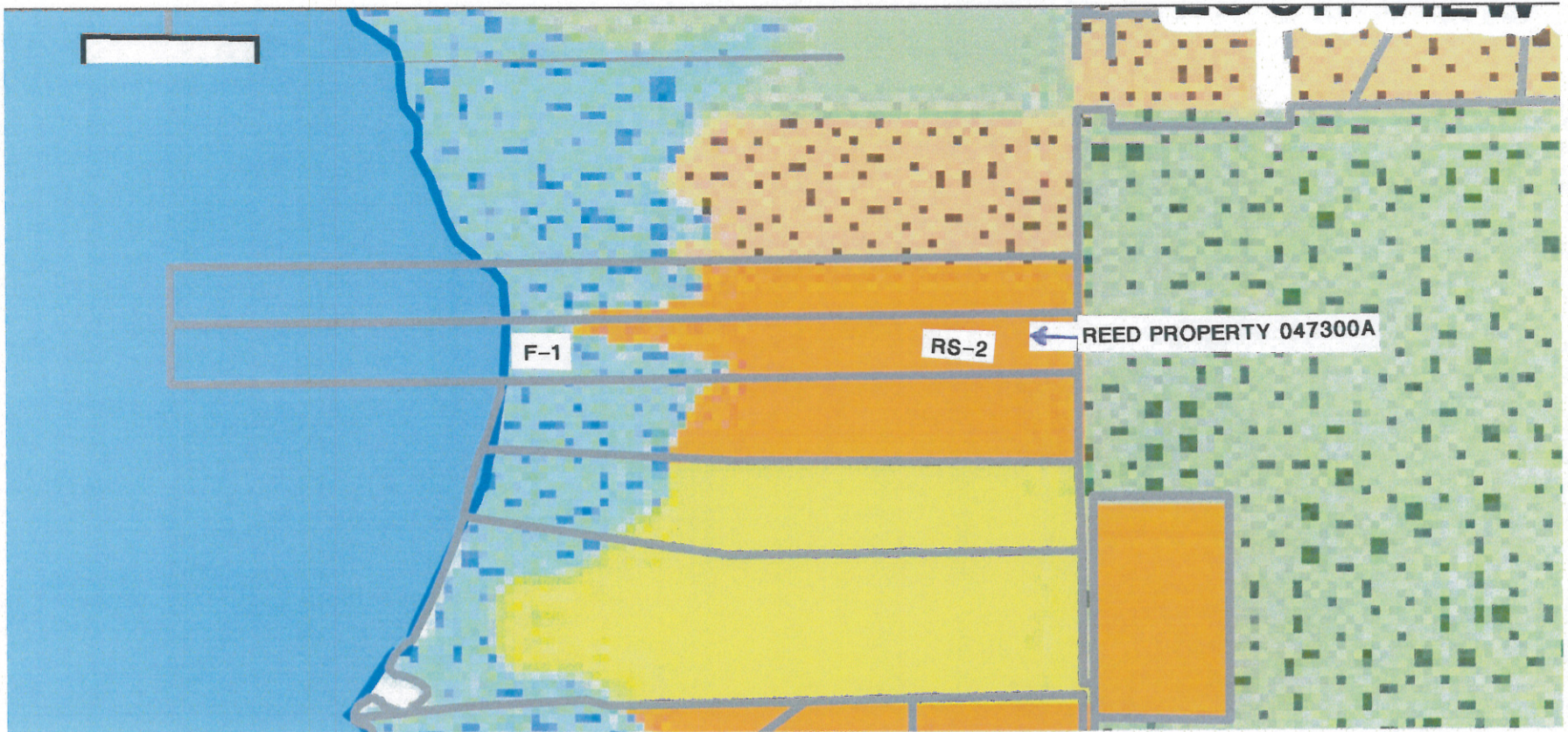
I understand that I should not contact any members of the Board of Appeals regarding this matter and that doing so may require that member to abstain from voting on this matter.

I understand as Owner(s) of the property subject of this application understand that this application and all required forms and information must be completed and accurate, as determined by the Planning and Zoning Administrator for the Village of Richfield, before a meeting and/or public hearing (if required) can be scheduled.


Property Owner Signature

July 29, 2013
Date

EXHIBIT A



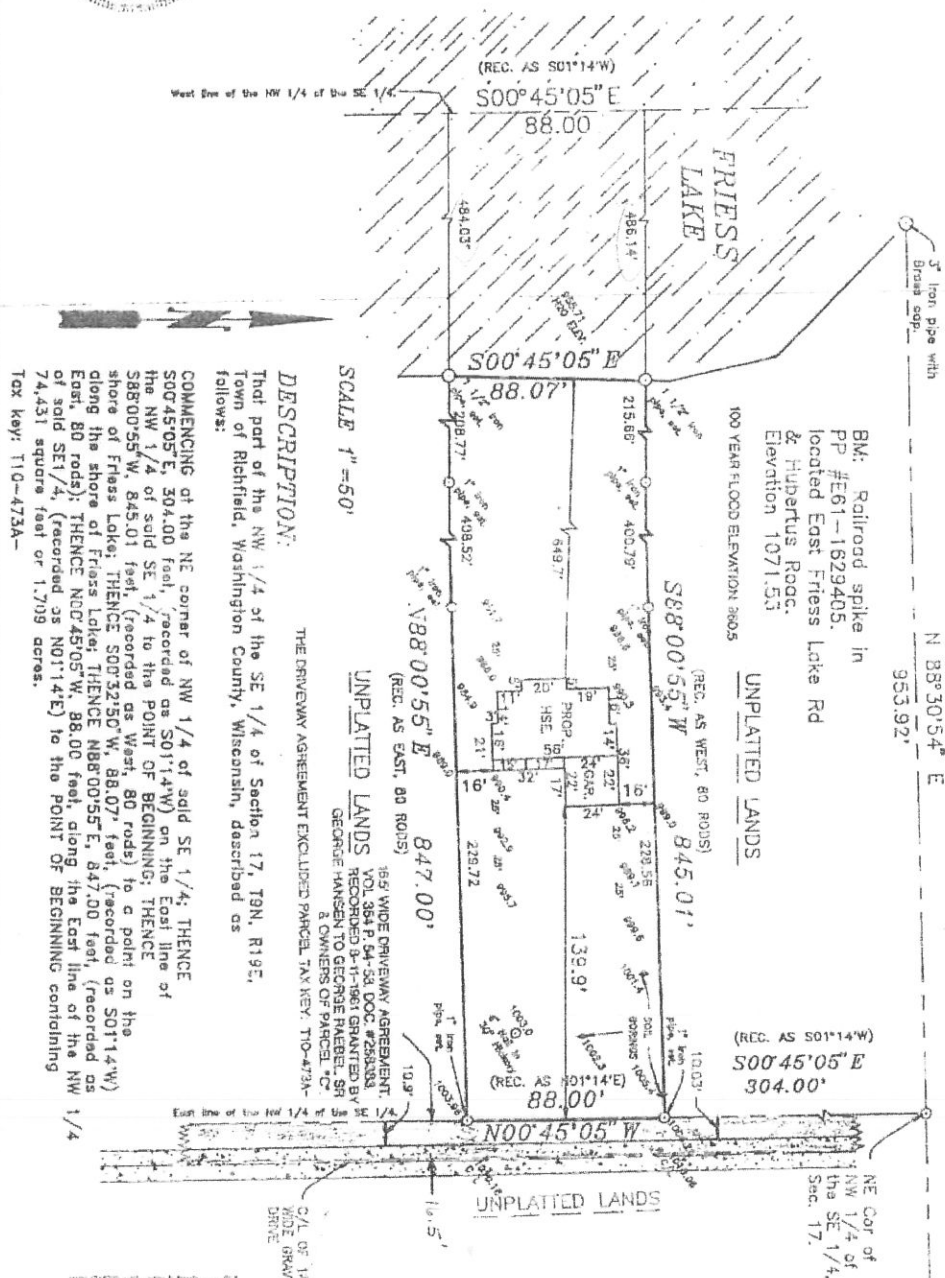


PROFESSIONAL ENGINEER - REGISTERED LAND SURVEYOR

3782 OVERLOOK DRIVE WEST
HUBERTUS, WISCONSIN 53033
PHONE (414) 628-1409

FAX (414) 528-1855

PLAT OF SURVEY



THIS SURVEY IS MADE FOR THE EXCLUSIVE USE OF THE PRESENT OWNERS OF THE PROPERTY; ALSO THOSE WHO PURCHASE, MORTGAGE, OR GUARANTEE THE TITLE THERETO, WITHIN ONE YEAR FROM DATE HEREOF.

REVISÉD APRIL 25, 1994

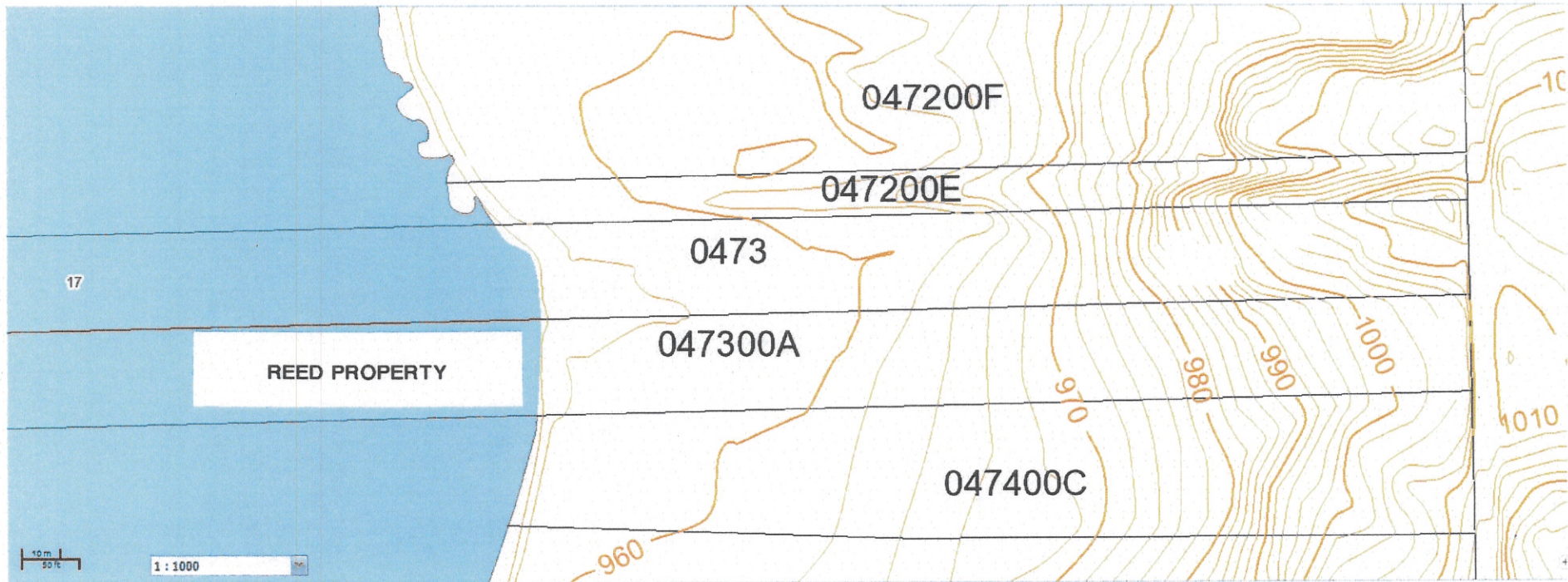
Dated this 20th day of April 1994.

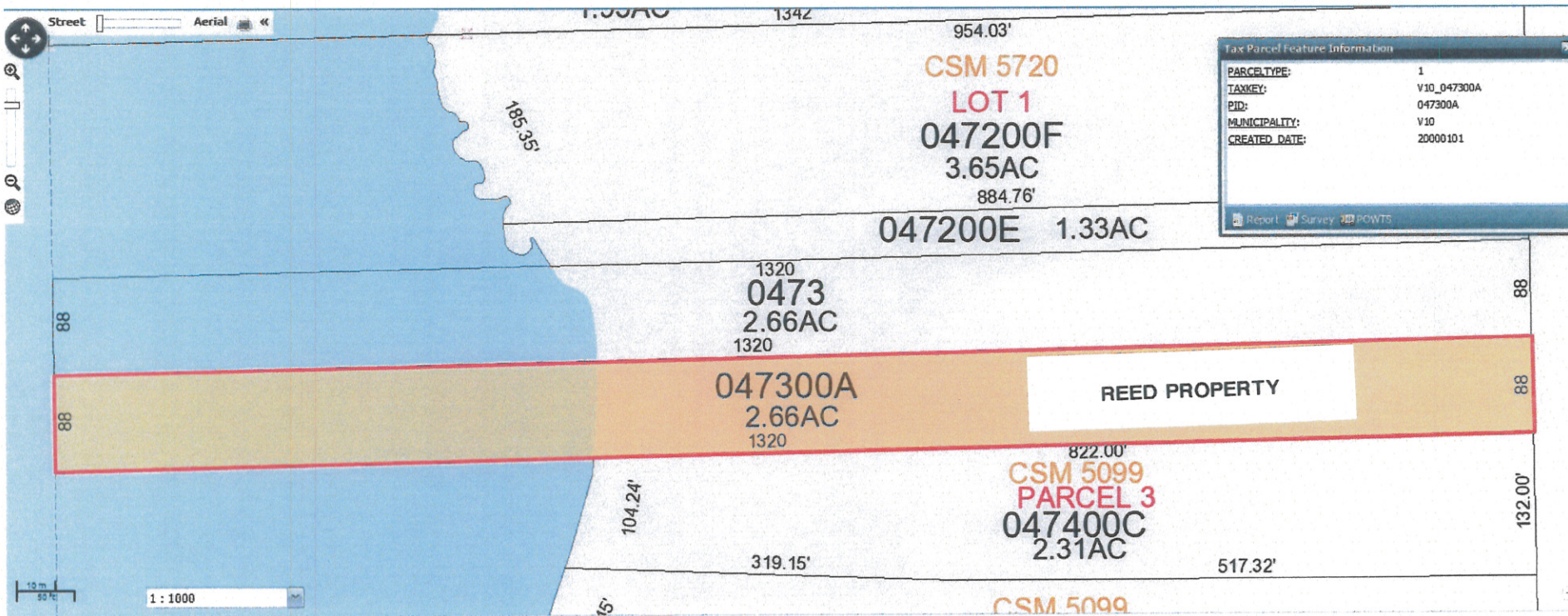
Survey for: MIKE & CAROL REED

SURVEYOR

THIS IS AN ORIGINAL
PRINT ONLY IF SEAL IS
IMPRINTED IN RED

EXHIBIT C





*Village of Richfield, WI
Tuesday, August 13, 2013*

Chapter 70. ZONING

ARTICLE III. Districts

70.194. Rs-2 Single-Family Residential District.

[Ord. No. 94-01-01, § 2, 1-13-1994; Ord. No. 99-07-01, § 1, 7-15-1999]

- A. Intent. The Rs-2 single-family residential district is intended to provide for single-family residential development at densities not exceeding 0.67 dwelling unit per net acre. Further, this zoning classification is restricted solely to properties located within Rs-2 single-family residential district prior to January 1, 1994.
- B. Permitted Principal Uses. Permitted principal uses in the Rs-2 district are as follows:
1. Single-family dwellings with attached garages.
 2. Foster homes and community living arrangements.
 3. Family day-care homes as set forth in Wis. Stats. § 66.304.
- C. Permitted accessory uses. Permitted accessory uses in the Rs-2 district are as follows:
1. Minor home occupations as provided for in section 70.303.
 2. A yard and gardening equipment storage structure not to exceed 180 square feet in floor area.
 3. One temporary nonilluminated for sale sign not larger than 10 square feet in area placed by the owner or his agent for the one-time sale of personal goods, land, or buildings (see section 70.186).

D. Conditional uses (see section 70.241). Conditional uses in the Rs-2 district are as follows: Residential planned unit development (PUD) such as cluster developments and detached condominiums. The Rs-2 district lot size and frontage and yard requirements may be varied provided that adequate open space shall be provided so that the average intensity and density of land use shall be no greater than that permitted for the Rs-2 district. The proper preservation, care and maintenance by the original and all subsequent owners of the exterior design and all common structures, facilities, utilities, access and open spaces shall be assured by deed, plat restrictions, and/or condominium declaration, enforceable by the Village. All PUDs in the Rs-2 district shall comply with the following minimum standards:

1. The minimum PUD development area shall be 10 acres.
2. The minimum PUD lot area shall be one acre per dwelling unit.
3. The minimum PUD lot width shall be 150 feet at the building setback line.
4. Land that has less area and/or otherwise cannot meet the minimal dimensional standards required for this Rs-2 district may be added to this Rs-2 district by combining such land with a lot or parcel already located in this Rs-2 district, provided that all of the following criteria can be met:
 - a. The land to be added is not a separate lot or parcel;
 - b. The combination of additional land and the resulting total lot or parcel area does not result in, nor provide the opportunity for, the creation of additional and separate lots or parcels;
 - c. The land to be added is or will be legally combined with and attached to an adjoining lot or parcel located within the same Rs-2 district;
 - d. The land to be added is or will be under the same or common ownership as the adjoining lot or parcel to which it is or will be attached; and

- e. The land to be added is used for the same principal and/or accessory uses allowed in this Rs-2 district.
 5. The minimum PUD building area height and setbacks shall be the same as required for permitted principal uses.
 6. No detached structure shall be located closer than 50 feet to another structure within the PUD development. Yards adjacent to exterior property lines shall not be less than those required for permitted principal uses.
 7. Each lot must be served by a county approved standard on-site soil absorption sewage disposal system.
 8. Major home occupations as provided for in section 70.303(B).
- E. Lot area and width. Lot area and width in the Rs-2 district are as follows:
1. Lots shall have a minimum net area of 65,000 square feet.
 2. Lots shall have a width of not less than 200 feet at the building setback line.
- F. Building height and size. Building height and size in the Rs-2 district are as follows:
1. No principal building or parts of a principal building shall exceed 35 feet in height.
 2. The minimum floor area of a dwelling unit shall be 1,300 square feet; not less than 1,050 square feet on the main entry floor level of a two or more story building; and no bedroom shall be less than 100 square feet in area, exclusive of closets.
 3. The sum total of the first floor area of the principal building and all accessory buildings shall not exceed 8% of the lot area.
 4. The disturbance (grading, tree cutting, filling, digging) on a lot or parcel shall not exceed 10% of the total acres of the lot or parcel.

G. Setback and yards. Setback and yards in the Rs-2 are as follows:

1. There shall be a minimum building setback of 50 feet from the right-of-way of all streets.
2. There shall be a side yard on each side of all structures not less than 30 feet in width.
3. There shall be a rear yard of not less than 50 feet.

H. Parking space. Off-street parking space in the Rs-2 district shall be as follows: There shall be a minimum of three off-street automobile parking spaces.

I. Minimum utility service. The minimum utility service in the Rs-2 district shall be electricity, county approved wastewater treatment and disposal, and water supply systems.



This GAI GIS map contains information including but not limited to Washington County. This data is subject to constant change. GAI makes no warranties or guarantees, either expressed or implied, as to the accuracy or correctness of this data, nor accepts any liability arising from any incorrect, incomplete or misleading information contained therein.

8/13/2013 R:\LKG\Mapping\Richfield\GIS\Projects\R13_0862_001_GIS\Zoning_Variance\Building_Setback_8x11.mxd

Village of Richfield
Washington County, Wisconsin

V10-0743-00A
Building Setbacks



gai consultants
transforming ideas into reality.
1 inch equals 100 feet



This GAI GIS map contains information including but not limited to Washington County. This data is subject to constant change. GAI makes no warranties or guarantees, either expressed or implied, as to the accuracy or correctness of this data, nor accepts any liability arising from any incorrect, incomplete or misleading information contained therein.

8/13/2013 R:\KGM\Richfield\GIS\Projects\R13_0862_001_GIS\Zoning_Variance\Building_Setback_8x11.mxd

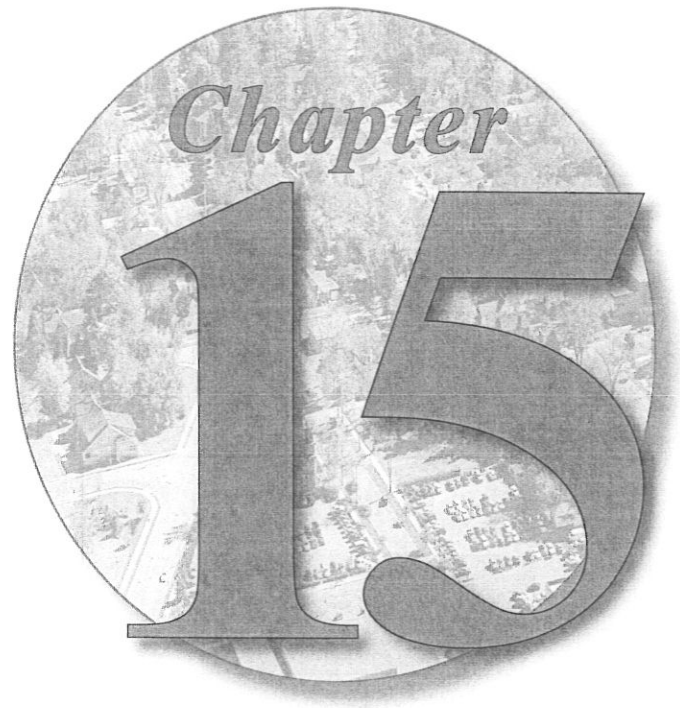
Village of Richfield
Washington County, Wisconsin

V10-0743-00A
Building Setbacks



gai consultants
transforming ideas into reality.
1 inch equals 100 feet

Variances



Whereas permitted and conditional uses allow a property to be used in a way expressly listed in the ordinance, a variance allows a property to be used in a manner forbidden by the zoning ordinance.¹⁴⁰ Two types of zoning variances are generally recognized: **Area variances** provide an increment of relief (normally small) from a physical dimensional restriction such as a building height or setback.¹⁴¹ **Use variances** permit a landowner to put a property to an otherwise prohibited use.¹⁴² Though not specifically restricted by statute or case law,¹⁴³ use variances are problematic for reasons discussed on page 102. Variance decisions related to zoning are always heard by the zoning board of adjustment or appeals.

¹⁴⁰ *Fabyan v. Waukesha County Bd. of Adjustment*, 2001 WI App 162, 246 Wis. 2d 851, 632 N.W.2d 116

¹⁴¹ *State ex rel. Ziervogel v. Washington County Bd. of Adjustment*, 2004 WI 23, 269 Wis. 2d 549, 676 N.W.2d 401

¹⁴² *State ex rel. Ziervogel v. Washington County Bd. of Adjustment*, 2004 WI 23, 269 Wis. 2d 549, 676 N.W.2d 401

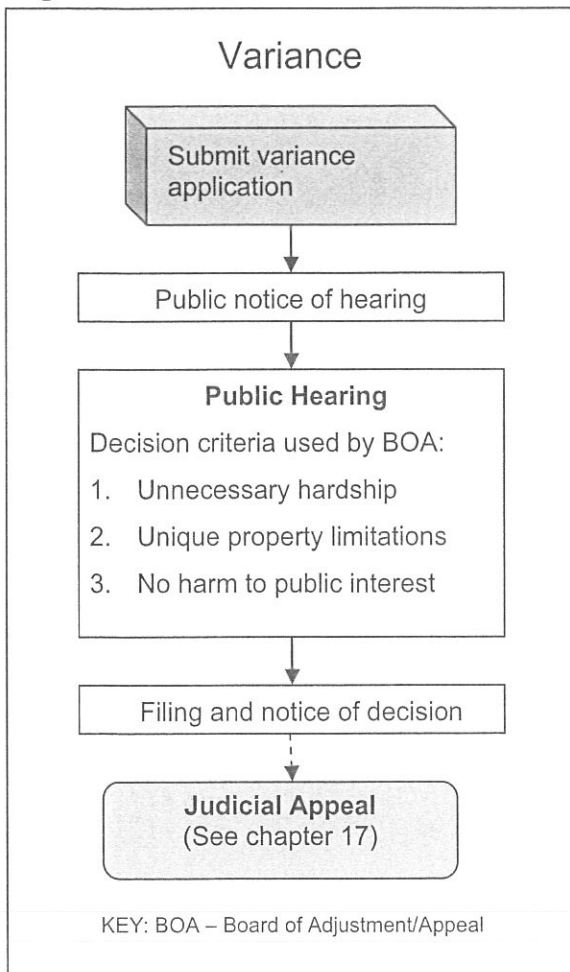
¹⁴³ In the past, it was doubtful that zoning boards of adjustment in Wisconsin had the authority to grant use variances [see *State ex rel. Markdale Corp. v. Bd. of Appeals of Milwaukee*, 27 Wis. 2d 154, 133 N.W.2d 795 (1965)]. Now, the Supreme Court has determined that boards of adjustment do have the authority to issue use variances [see *State ex rel. Ziervogel v. Washington County Bd. of Adjustment*, 2004 WI 23, 269 Wis. 2d 549, 676 N.W.2d 401 and *State v. Waushara County Bd. of Adjustment*, 2004 WI 56, 271 Wis. 2d 547, 679 N.W.2d 514].

What are the criteria for granting a variance?

To qualify for a variance, an applicant has the burden of proof to demonstrate that all three criteria defined in state statutes and outlined below are met.¹⁴⁴

- Unnecessary hardship
- Unique property limitations
- No harm to public interests

Figure 24: Variance Process



Local ordinances and case law may also specify additional requirements. The zoning department can assist a petitioner in identifying how these criteria are met by providing clear application materials that describe the process for requesting a variance and the standards for approval (*see the sample application form in Appendix D*).

1. Unnecessary Hardship

The Wisconsin Supreme Court distinguishes between area and use variances when applying the unnecessary hardship test:

For a **use variance**, unnecessary hardship exists only if the property owner shows that they would have no reasonable use of the property without a variance.¹⁴⁵ What constitutes *reasonable use* of a property is a pivotal question that the board must answer on a case-by-case basis. If the property currently supports a reasonable use, the hardship test is not met and a variance may not be granted. If a variance is required to allow reasonable use of a property, only that variance which is essential to support reasonable use may be granted and no more. A proposed use may be *reasonable* when it:

¹⁴⁴ *State v. Kenosha County Bd. of Adjustment*, 218 Wis. 2d at 420, 577 N.W.2d 813 (1998); *Arndorfer v. Sauk County Bd. of Adjustment*, 162 Wis. 2d at 254, 469 N.W.2d 831 (1991).

¹⁴⁵ *State v. Kenosha County Bd. of Adjustment*, 218 Wis. 2d 396, 413-414, 577 N.W.2d 813 (1998).

- does not conflict with uses on adjacent properties or in the neighborhood,
- does not alter the basic nature of the site (e.g., conversion of wetland to upland),
- does not result in harm to public interests, and
- does not require multiple or extreme variances.

For an **area variance**, unnecessary hardship exists when compliance would unreasonably prevent the owner from using the property for a permitted purpose (leaving the property owner without any use that is permitted for the property) or would render conformity with such restrictions “unnecessarily burdensome.”¹⁴⁶ To determine whether this standard is met, zoning boards should consider the purpose of the zoning ordinance in question (see the appendix for information about the purposes of shoreland and floodplain zoning), its effects on the property, and the short-term, long-term, and cumulative effects of granting the variance.¹⁴⁷

Courts state that “unnecessarily burdensome” may be interpreted in different ways depending on the purposes of the zoning law from which the variance is being sought. For example, the purpose of a shoreland district to *protect water quality, fish, and wildlife habitat and natural scenic beauty for all navigable waters in Wisconsin* would be interpreted differently from the purpose of a residential district to *protect the character of established residential neighborhoods*. In light of increased focus on the purposes of a zoning restriction, zoning staff and zoning boards have a greater responsibility to explain and clarify the purposes behind dimensional zoning requirements.

2. Hardship Due to Unique Property Limitations

Unnecessary hardship must be due to unique physical limitations of the property, such as steep slopes or wetlands that prevent compliance with the ordinance.¹⁴⁸ The circumstances of an applicant (growing family, need for a larger garage, etc.) are not a factor in deciding variances.¹⁴⁹ Property limitations that prevent ordinance compliance and are common to a number of properties

¹⁴⁶ *Snyder v. Waukesha County Zoning Bd. of Adjustment*, 74 Wis. 2d at 475, 247 N.W.2d 98 (1976) (quoting 2 Rathkopf, *The Law of Zoning & Planning*, § 45-28, 3d ed. 1972).

¹⁴⁷ *State ex rel. Ziervogel v. Washington County Bd. of Adjustment*, 2004 WI 23, 269 Wis. 2d 549, 676 N.W.2d 401

¹⁴⁸ *State ex rel. Spinner v. Kenosha County Bd. of Adjustment*, 223 Wis. 2d 99, 105-6, 588 N.W.2d 662 (Ct. App. 1998); *State v. Kenosha County Bd. of Adjustment*, 218 Wis. 2d 396, 410, 577 N.W.2d 813 (1998); *Arndorfer v. Sauk County Bd. of Adjustment*, 162 Wis. 2d 246, 255-56, 469 N.W.2d 831 (1991); *Snyder v. Waukesha County Zoning Bd. of Adjustment*, 74 Wis. 2d 468, 478, 247 N.W.2d 98 (1976)

¹⁴⁹ *Snyder v. Waukesha County Zoning Bd. of Adjustment*, 74 Wis. 2d 468, 478-79, 247 N.W.2d 98

should be addressed by amending the ordinance.¹⁵⁰ For example, an ordinance may, in some cases, be amended to provide reduced setbacks for a subdivision that predates the current ordinance and where lots are not deep enough to accommodate current standards.

3. No Harm to Public Interests

A variance may not be granted which results in harm to public interests.¹⁵¹ In applying this test, the zoning board should review the purpose statement of the ordinance and related statutes in order to identify public interests. These interests are listed as objectives in the purpose statement of an ordinance and may include:

- Promoting and maintaining public health, safety, and welfare
- Protecting water quality
- Protecting fish and wildlife habitat
- Maintaining natural scenic beauty
- Minimizing property damages
- Ensuring efficient public facilities and utilities
- Requiring eventual compliance for nonconforming uses, structures, and lots
- Any other public interest issues

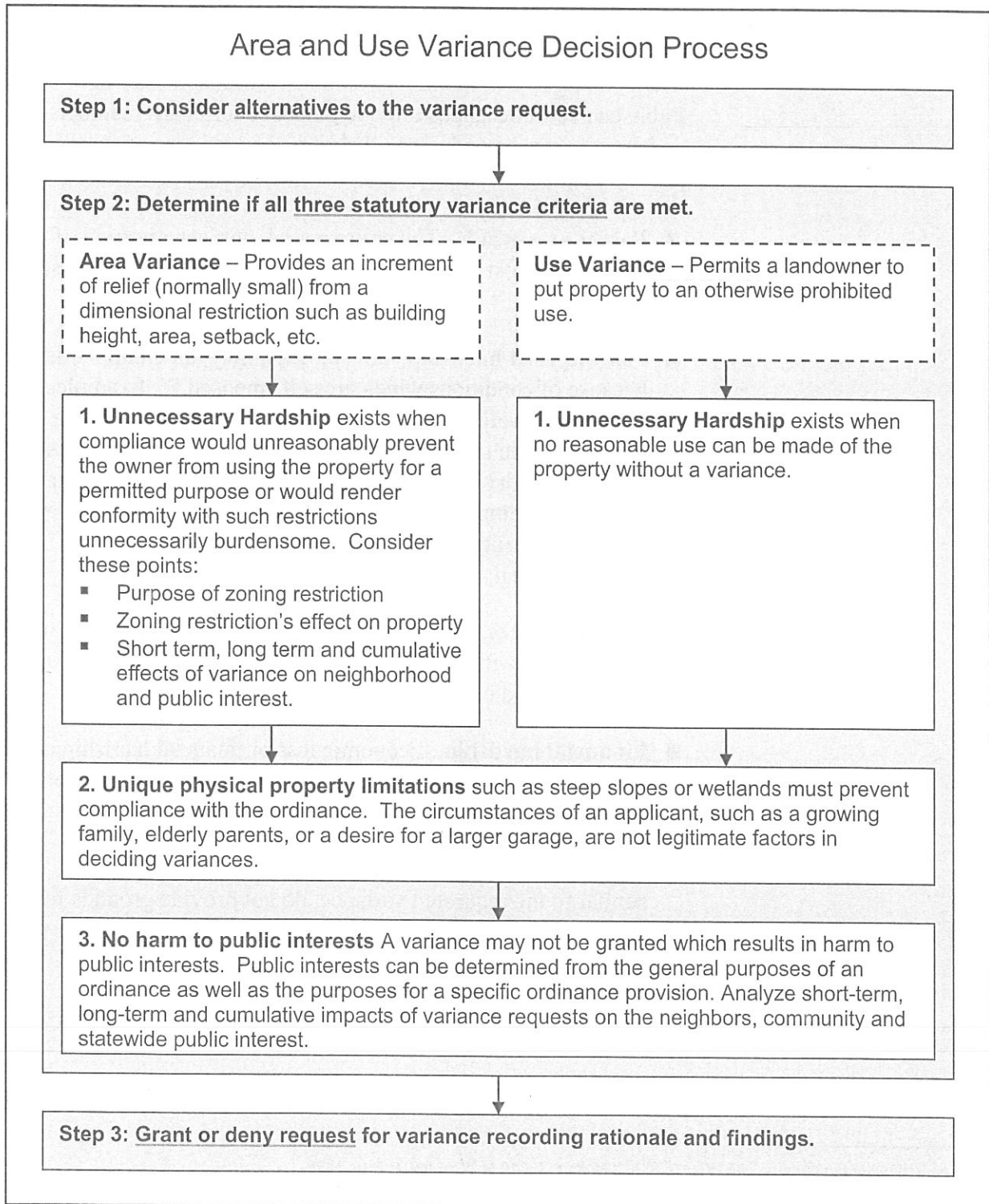
In light of public interests, zoning boards must consider the short-term and long-term impacts of the proposal and the cumulative impacts of similar projects on the interests of the neighbors, the community, and even the state.¹⁵² Review should focus on the general public interest, rather than the narrow interests or impacts on neighbors, patrons or residents in the vicinity of the project.

The flow chart in Figure 25 summarizes the standards for area variances and use variances. Application forms and decision forms reflecting these standards are included in *Appendix D*.

¹⁵⁰ *Arndorfer v. Sauk County Bd. of Adjustment*, 162 Wis. 2d 246, 256, 469 N.W.2d 831 (1991); *State v. Winnebago County*, 196 Wis. 2d 836, 846, 540 N.W.2d 6 (Ct. App. 1995)

¹⁵¹ *State v. Winnebago County*, 196 Wis. 2d 836, 846-47, 540 N.W.2d 6 (Ct. App. 1995); *State v. Kenosha County Bd. of Adjustment*, 218 Wis. 2d 396, 407-8, 577 N.W.2d 813 (1998)

¹⁵² *State ex rel. Ziervogel v. Washington County Bd. of Adjustment*, 2004 WI 23, 269 Wis. 2d 549, 676 N.W.2d 401 and *State v. Waushara County Bd. of Adjustment*, 2004 WI 56, 271 Wis. 2d 547, 679 N.W.2d 514.

Figure 25: Area and Use Variance Decision Process

Additional Standards

Few areas of land use law are as extensively litigated as the standards necessary to qualify for a variance. The rich case law concerning variances provides these additional guiding principles that a zoning board should rely on in their decision-making. Published court decisions provide guidance for board members and are cited in the endnotes. Websites for accessing case law are provided in *Appendix B*.

- **Parcel-as-a-whole.** The entire parcel, not just a portion of the parcel, must be considered when applying the unnecessary hardship test.¹⁵³
- **Self-imposed hardship.** An applicant may not claim hardship because of conditions which are self-imposed.¹⁵⁴ Examples include excavating a pond on a vacant lot and then arguing that there is no suitable location for a home; claiming hardship for a substandard lot after selling off portions that would have allowed building in compliance; and claiming hardship after starting construction without required permits or during a pending appeal.
- **Circumstances of applicant.** Circumstances of an applicant such as a growing family or desire for a larger garage are not a factor in deciding variances.¹⁵⁵
- **Financial hardship.** Economic loss or financial hardship do not justify a variance.¹⁵⁶ The test is not whether a variance would maximize economic value of a property.
- **Nearby violations.** Nearby ordinance violations, even if similar to the requested variance, do not provide grounds for granting a variance.¹⁵⁷
- **Objections from neighbors.** A lack of objections from neighbors does not provide a basis for granting a variance.¹⁵⁸

¹⁵³ *State v. Winnebago County*, 196 Wis. 2d 836, 844-45 n.8, 540 N.W.2d 6 (Ct. App. 1995)

¹⁵⁴ *State ex rel. Markdale Corp. v. Bd. of Appeals of Milwaukee*, 27 Wis. 2d 154, 163, 133 N.W.2d 795 (1965); *Snyder v. Waukesha County Zoning Bd. of Adjustment*, 74 Wis. 2d 468, 479, 247 N.W.2d 98 (1976).

¹⁵⁵ *Snyder v. Waukesha County Zoning Bd. of Adjustment*, 74 Wis. 2d 468, 478-79, 247 N.W.2d 98 (1976)

¹⁵⁶ *State v. Winnebago County*, 196 Wis. 2d 836, 844-45, 540 N.W.2d 6 (Ct. App. 1995); *State v. Ozaukee County Bd. of Adjustment*, 152 Wis. 2d 552, 563, 449 N.W.2d 47 (Ct. App. 1989).

¹⁵⁷ *Von Elm v. Bd. of Appeals of Hempstead*, 258 A.D. 989, 17 N.Y.S.2d 548 (N.Y. App. Div. 1940)

¹⁵⁸ *Arndorfer v. Sauk County Bd. of Adjustment*, 162 Wis. 2d 246, 254, 469 N.W.2d 831 (1991)

- **Variance to meet code.** Variances to allow a structure to be brought into compliance with building code requirements have been upheld by the courts.¹⁵⁹

Are there any limits on granting a variance?

Minimum variance allowed

The board may grant only the minimum variance needed.¹⁶⁰ For a use variance, the minimum variance would allow reasonable use, whereas for an area variance, the minimum variance would relieve unnecessary burdens. For example, if a petitioner requests a variance of 30 feet from setback requirements, but the zoning board finds that a 10-foot setback reduction would not be unnecessarily burdensome, the board should only authorize a variance for the 10-foot setback reduction.

Conditions on development

The board may impose conditions on development (mitigation measures) to eliminate or substantially reduce adverse impacts of a project under consideration for a variance. Conditions may relate to project design, construction activities, or operation of a facility¹⁶¹ and must address and be commensurate with project impacts (*review the essential nexus and rough proportionality tests in Chapter 14*).

Specific relief granted

A variance grants only the specific relief requested (as described in the application and plans for the project) and as modified by any conditions imposed by the zoning board. The variance applies only for the current project and not for any subsequent construction on the lot. Referring to Figure 26 on the next page, if the landowner has received a variance to build the garage, they may only build the screen porch if they receive an additional variance specifically for the screen porch.

Variances do not create nonconforming structures

If a variance is granted to build or expand a structure, it does not give that structure nonconforming structure status. This relates to the previous point that variances only provide specific relief. In

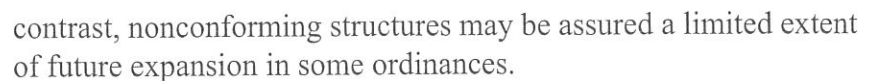
Nonconforming Structure – A building or other structure, lawfully existing prior to the passage of a zoning ordinance or ordinance amendment, which fails to comply with current dimensional standards of the ordinances.

¹⁵⁹ *Thalhofer v. Patri*, 240 Wis. 404, 3 N.W.2d 761 (1942); see also *State v. Kenosha County Bd. of Adjustment*, 218 Wis. 2d 396, 419-420, 577 N.W.2d 813 (1998).

¹⁶⁰ Anderson, Robert M. *American Law of Zoning* 3d, (1986) Vol. 3, s. 20.86, pp. 624-5

¹⁶¹ Anderson, Robert M. *American Law of Zoning* 3d, (1986) Vol. 3, ss. 20.70 and 20.71, pp. 587-95

If the landowner has received a variance to build the garage, they may only build the screen porch if they receive an additional variance specifically for the screen porch.



Because a property rather than its owner must qualify for a variance to be granted (unique property limitations test), a variance transfers with the property to subsequent owners.¹⁶²

In some cases, a single project may require more than one variance to provide reasonable use of a property. The 3-step test should be applied to each variance request in determining whether relief can be granted by the zoning board.

In other cases, original development of a property may have been authorized by variance(s). The owner later requests an additional variance. Generally, the later request should be denied since, in granting the original variance, the zoning board was required to determine that a variance was essential to provide reasonable use of the property or that not granting the (area) variance would have been unreasonably burdensome in light of the ordinance purpose. The board cannot subsequently find the opposite unless there

100

have been significant changes on the property or on neighboring properties. A later variance could also be granted if the written purpose of the zoning designation for which an area variance was sought significantly changed, thereby allowing the variance to qualify under the unreasonably burdensome standard.

What is the process for appealing a variance decision?

A variance decision may be appealed to circuit court by any aggrieved person, taxpayer, officer or body of the municipality within 30 days of filing of the decision in the office of the board.¹⁶³ (See Chapter 17 *Judicial Appeal of Zoning Board Decisions*.)

Why are the standards for area variances different from those of use variances?

The law treats area and use variances differently because they “serve distinct purposes,” “affect property rights in distinct ways,” and “affect public and private interests differently.” According to the *Ziervogel* decision, the adverse impacts of an area variance are thought to be less than those of a use variance. Furthermore, the “no reasonable use” standard associated with use variances leaves zoning boards “with almost no flexibility” and eliminates the statutory discretion of zoning boards to decide variances.

Figure 27: Land Division Variances... Creatures of a Different Color

So far our discussion has focused only on zoning variances. As zoning boards may be asked to decide land division variances (including subdivision ordinances), here are a few salient points:

- Subdivision variances are not the same as zoning variances.
- There is no Wisconsin law addressing land division variances.
- A local unit of government may allow variances to locally-determined land division standards. In this case they must determine the process and standards, and should include them in the land division or subdivision ordinance.
- Local units of government may choose to not allow land division variances.
- A local unit of government is not allowed to provide a variance to a state-mandated standard.
- Due process, including a hearing with public notice is required for land division variances.

¹⁶³ Wis. Stat. § 59.694 (10)

AREA VARIANCES AND USE VARIANCES

What is the difference between an area variance and a use variance?

It may not always be easy to determine if an applicant is seeking an area variance or a use variance. It is arguable that a large deviation from a dimensional standard, or multiple deviations from several dimensional standards on the same lot, may constitute a use variance instead of an area variance. For example, allowing significantly reduced setbacks could have the same effect as changing the zoning from one residential zoning district that requires significant setbacks and open space to a second residential zoning district that has minimal setbacks and open space.

Based on majority opinions of the Wisconsin Supreme Court,¹⁶⁴ it appears that, in order to draw the line between area variances and use variances, zoning boards should consider the degree of deviation from each dimensional standard for which a variance is sought in order to determine if the requested variance would “permit wholesale deviation from the way in which land in the [specific] zone is used.”

¹⁶⁵ A proactive community seeking to consistently differentiate between area variances and use variances could adopt an ordinance provision similar to the following:

Unless the board of adjustment finds that a property cannot be used for any permitted purpose, area variances shall not be granted that allow for greater than a ____% (or ____ foot) deviation in area, setback, height or density requirements specified in the ordinance.

Why are use variances discouraged?

Wisconsin Statutes do not specifically prohibit use variances. However, courts recognize that they are difficult to justify because they may undermine ordinance objectives and change the character of the neighborhood.¹⁶⁶ Some Wisconsin communities prohibit use variances in their ordinances. There are a number of practical reasons why they are not advisable:

- **Unnecessary hardship must be established in order to qualify for a variance.**

This means that without the variance, none of the uses allowed as permitted or conditional uses in the current zoning district are feasible for the property. This circumstance is highly unlikely.

- **Many applications for use variances are in fact administrative appeals.**

Often the zoning board is asked to determine whether a proposed use is included within the meaning of a particular permitted or conditional use or whether it is sufficiently distinct as to exclude it from the ordinance language. Such a decision is not a use variance but an appeal of the administrator’s interpretation of ordinance text.

- **Zoning amendments are a more comprehensive approach than use variances.**

When making map or text amendments to the zoning ordinance, elected officials consider the larger land area to avoid piecemeal decisions that may lead to conflict between adjacent incompatible uses and may undermine neighborhoods and the goals established for them in land use plans and ordinances. Towns also have meaningful input (veto power) on zoning amendments to general zoning ordinances.

¹⁶⁴ *State ex rel. Ziervogel v. Washington County Bd. of Adjustment*, 2004 WI 23, 269 Wis. 2d 549, 676 N.W.2d 401 and *State v. Waushara County Bd. of Adjustment*, 2004 WI 56, 271 Wis. 2d 547, 679 N.W.2d 514.

¹⁶⁵ *State ex rel. Ziervogel v. Washington County Bd. of Adjustment*, 2004 WI 23, 269 Wis. 2d 549, 676 N.W.2d 401

¹⁶⁶ *State v. Kenosha County Bd. of Adjustment*, 218 Wis. 2d 396, 412 fn. 10, 577 N.W.2d 813 (1998); *Snyder v. Waukesha County Zoning Bd. of Adjustment*, 74 Wis. 2d 468, 473, 247 N.W.2d 98 (1976).